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GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 11th September 1948.

ORDINANCE No. XXIII of 1948

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ORDINANCE

to provide for the rendering of national service by persons serving on temporary engagements in, and by persons released from, the Indian Land Forces

WHEREAS an emergency has arisen which makes it necessary to provide for the rendering of national service by persons serving on temporary engagements in, and by persons released from, the Indian Land Forces;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2) the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.—(1) This Ordinance may be called the National Service (Temporary and Released Persons) Ordinance, 1948.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. Definitions.—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "competent authority" means, with reference to any person liable to be retained in, or called up for, national service under this Ordinance, the Commander-in-Chief, Indian Army and includes such other authority as may be specified in this behalf by the Central Government by notification in the official Gazette;

(b) "national service" means service in the Indian Land Forces or in any corps thereof and includes service in a civilian capacity under the orders of the appropriate authority serving in the said Forces;

(c) "persons serving on temporary engagements" mean persons who, having been commissioned, appointed or enrolled in the Indian Land Forces on or after the 3rd day of September, 1939, for the duration of the war and for twelve months thereafter or for any lesser period, are continuing to

serve in the said Forces on the commencement of this Ordinance and who, on such commencement are not employed on permanent engagements in the said Forces;

(d) "prescribed" means prescribed by rules made under this Ordinance;

(e) "released person" means any person who, after having served in the Indian Land Forces, has been released therefrom on or after the 1st day of January, 1946, in pursuance of the Release Regulations, Indian Army and Women Services, India, 1945.

3. Liability of persons serving on temporary engagements for national service.—Notwithstanding anything to the contrary contained in the conditions of service relating to persons serving on temporary engagements, every person serving on a temporary engagement shall be liable to be retained in national service under orders issued by the competent authority in this behalf either generally or addressed to any such person in particular.

4. Liability of released persons for national service.—(1) Every released person shall be liable under this Ordinance to be called up for national service unless such person is, at the time of such calling up, employed in a civilian capacity in any department of Government or of the Government of any Acceding State.

(2) Notwithstanding anything contained in sub-section (1), no released person who has completed his fifty-fifth year shall be liable to be called up for national service under this Ordinance.

5. Procedure for calling up for national service.—(1) The competent authority may cause to be served on any released person liable to be called up for national service a notice in writing stating that he is called up for national service in such capacity as may be specified in the notice, and requiring him to present himself before such person and at such place and at such time (not earlier than the thirtieth day after the date of the service of the notice) as may be so specified.

(2) Where a calling up notice has been duly served on any released person, the competent authority may, at any time while that person remains liable to be called up for national service, cancel the notice and cause to be served on him a further notice varying the original notice.

(3) Such travelling and other allowances as may be prescribed shall be paid by the competent authority to any person required to present himself in accordance with any notice under this section.

6. Effect of calling up for national service.—Where a notice is served under section 5 upon a released person who is a released officer, warrant officer or enrolled person calling him up for national service, such person shall be deemed, as from the date specified in the notice, to have been duly commissioned, appointed or enrolled, as the case may be, for service in the Indian Land Forces or any corps thereof as so specified.

7. Preservation of certain rights.—When any released person called up for national service has any rights under any provident or superannuation fund or other scheme for the benefit of employees maintained in connection with the employment he relinquishes, he shall continue so long as he remains employed in national service to have in respect of such fund or scheme such rights as may be prescribed.

8. Reinstatement in civil employ after termination of national service.—(1) It shall be the duty of any employer by whom any released person called up for national service was employed at the date of the notice calling him up for such service to reinstate him in his employment at the termination of the national service in an occupation and under conditions not less favourable to him than those which would have been applicable to him had his employment not been so interrupted:

Provided that such released person applies for reinstatement before the expiration of two months from the date of termination of the national service.

(2) Notwithstanding anything contained in sub-section (1), if for any reason the reinstatement of such person is represented by the employer to be impracticable, either party may refer the matter to the prescribed authority and the prescribed authority, after due consideration of the facts as presented before him, may either exempt the employer from the terms of this section or refuse to grant any such exemption or grant the exemption on condition that the employer paid to the other party a sum not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer.

(3) Subject to the provisions of sub-section (2), any employer refusing to re-employ any released person as required by sub-section (1) shall be liable to pay to such person, by way of compensation, such sum (not exceeding an amount equal to six months' remuneration at the rate at which his last remuneration was payable to him by the employer) as the prescribed authority may determine; and if the employer fails to pay any such sum as so determined, he shall be punishable with fine which may extend to five thousand rupees.

Explanation.—The provisions of this section shall also apply to an employer who before a released person is actually called up for, or employed in, national service terminates his employment in circumstances such as to indicate an intention to evade the duty imposed upon an employer by sub-section (1); and where the termination of such employment takes place after the issue of a notice under sub-section (1) of section 5, it shall be presumed, until the contrary is proved, that the intention of such employer was to evade the duty imposed upon an employer by this section.

9. Penalties and procedure.—(1) Any released person who wilfully fails to comply with any notice issued under section 5 shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this section.

10. Protection for acts done in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the provisions of this Ordinance.

11. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying out the objects of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the form in which notices under section 5 may be issued and the manner in which they may be served;

(b) the amount and manner of payment of travelling and other allowances to released persons under sub-section (3) of section 5;

(c) the rights which a released person may have in any fund or scheme mentioned in section 7;

(d) the prescribed authorities for the purposes of section 8.

(3) In making any rule under this section, the Central Government may provide that a contravention thereof shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

C. RAJAGOPALACHARI,

Governor-General.

K. Y. BHANDARKAR,

Secy. to the Govt. of India.